

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the Complaint of)	
Theresa Sundquist against)	Case No. U-18116
Consumers Energy Company)	

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on November 15, 2016.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 7109 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before December 6, 2016, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before December 20, 2016. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN ADMINISTRATIVE HEARING
SYSTEM
For the Michigan Public Service Commission

Martin D. Snider
Administrative Law Judge

November 15, 2016
Lansing, Michigan

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the Complaint of)
Theresa Sundquist against)
Consumers Energy Company)

Case No. U-18116

PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

On June 8, 2016, Theresa Sundquist (Complainant) filed a Complaint against Consumers Energy Company (Consumers). Complainant made the following of allegations in her Complaint:

- The Michigan Public Service Commission (Commission) does not have subject matter jurisdiction to determine whether Consumers violated Commission rules and had no jurisdiction to conduct a formal hearing on billing disputes;
- Consumers employee Lynne McCollum provided Complainant inaccurate information regarding Complainant's right to file an appeal with the Commission;

- Consumers employee Lynne McCollum failed to provide Complainant with legal advice regarding the scope of an appeal with the Commission and the burden of proof for a filed complaint;
- Consumers failed to inform the Complainant of its “legal position” regarding Complainant’s allegation that she was billed based on her 2011 use of electricity provided to her by Consumers;
- The Commission’s informal hearing rules did not provide Complainant with an adequate opportunity to discovery;
- Consumers did not test Complainant’s electric meter on site, failed to inform the Complainant of the test results, and did not provide a meter report required by Commission Rule 460.3601(3);
- The electric meter tested by Consumers was not Complainant’s meter;
- The Commission employee who presided over Complainant’s informal hearing was not an attorney;
- The informal hearing was not an impartial proceeding;
- The informal hearing officer allowed Consumers employee Brian Morgan to provide information regarding the replacement of Complainant’s meter;
- The informal hearing officer improperly limited Complainant’s questioning of Consumers employee Brian Morgan;
- The informal hearing officer issued an oral rather than a written decision;
- The Commission’s Regulation Officer engaged in ex-parte communications with Consumers;

- The Commission's Regulation Officer improperly relied upon the Consumers Certification of Meter;
- Consumers "back billed" Complainant for 361kwh in May 2015;
- Consumers did not accurately bill Complainant for her electric use after May 2015;
- Consumers improperly billed Complainant in 2015 based on Complainant's 2011 use; and
- Consumers privately settled Complainant's dispute with Consumers with the Commission;

Complainant requests the following damages be awarded for Consumers alleged violations:

- A refund of Complainant's electric bills for May, June, July, and August for service provided to her in a different year and at a different service location.
- Reimbursement for the cost of ink, paper and unidentified other costs related to the preparation, filing, and general prosecution of Complainant's complaint.

On July 21, 2016, the Commission served the Complaint on Consumers. On August 10, 2016 Consumers filed an Answer to the Complaint (Answer). On August 1, 2016, a Notice of Hearing was issued by the Commission's Executive Secretary which set a hearing date of August 18, 2016. Subsequently, Complainant and Consumers stipulated to the adjournment of the August 18, 2016 hearing date and a rescheduled hearing date of October 19, 2016.

On October 19, 2016 an evidentiary hearing was convened. During the hearing, the following exhibits were admitted into the record:

For Consumers: CE 1, CE 2, CE 3, CE 4, CE 5, CE 6, CE 7, and CE 8.

For Complainant: C 1, 39 pages.

For Staff: Staff offered no exhibits

Consumers' employee Brian Morgan, Customer Care Representative, testified for Consumers. Theresa Sundquist, Complainant, testified on her own behalf. No briefs were required or filed in this matter. The record consists of 122 Transcript pages and 9 exhibits.

II.

BACKGROUND

Complainant is an electric residential customer of Consumers who took service at the times at issue in the Complaint at 505 Mason Hills Drive, Mason, MI 48854. In May 2015, Complainant used an estimated 385kWh of electricity and was billed \$59.91. In June 2015, Complainant used 1,083 kWh and was billed \$174.69. The June meter read was an actual read. Consumers levelized Complainant's May and June usage to 746 kWh and 722kWh for a two month total of 1,468 kWh. The levelized and non levelized usage total was the same. Consumers' levelization reduced Complainant's two month billing by \$14.33. In July 2015, Consumers determined, through an actual meter read, that the Complainant had used 1,786kWh. Complainant contacted Consumers regarding the high July 2015 meter read. Subsequently Consumer's determined that Complainant's meter dial had slipped. Consumers then reduced Complainant's July 2015 usage to 786 kWh.

Despite Consumers' adjustment to Complainant's July 2015 bill Complainant insisted that her electric use was lower than the amount determined by Consumers. In response, Consumers adjusted Complainant's electric usage for May, June, and July 2015 to 350kWh for each month. These adjustments reduced Complainant's original May, June, and July 2015 electric bill total billing amount by \$363.22.

III.

POSITION OF THE PARTIES

A. Complainant

1. Subject Matter Jurisdiction

Complainant provides a number of allegations in the Complaint. Complainant alleged on page two of her Complaint that the Commission has no jurisdiction to conduct a formal hearing on billing disputes. Complaint pp 2-3.

2. Improper Legal Advice

Also on page two of the Complaint, Complainant alleges that Ms. McCollum of Consumers provided Complainant with inaccurate legal advice when Ms. McCollum told Complainant she could bypass the Commission's informal hearing process and could file a formal complaint with the Commission. Complaint p.2

3 .Informal Hearing Process

Pages 3 and 4 of the Complaint provide Complainant's allegations regarding to the informal hearing process. The Complaint provides allegations regarding the following: substantive notice requirement, the legal dispute, and the discovery process. Because

this formal complaint contested case hearing is de novo and is not an appeal of the informal hearing process, there is no need to further address Complainant's specific positions regarding her informal complaint process allegations. Complaint pp.3-4.

4. Meter Testing

On page 6 of the Complaint, Complainant details her allegations regarding the testing of her electric meter. Complainant alleges that on August 4, 2015 she filed a complaint with the Michigan Attorney General, Consumer Protection Division, regarding Consumers alleged refusal to test Complainant's electric meter. Complainant alleged that Consumers did not test her meter on site but removed the meter on September 21, 2015 for testing at another location. Complaint p 6. Complainant alleges that she was told by Consumers that testing would take 14 days and after the testing was completed Consumers would send her a test certificate. Complaint p.5. Complainant also alleged that she was told by Consumers' staff that the meter was being removed for testing because the dial on the meter had slipped and that Complainant could be present during testing at the Consumers test facility. Complainant alleged that after the meter was removed for testing Consumers' staff never contacted her with a meter report which contained the results. Complainant indicated on page 7 of the Complaint that she was never contacted and provided with the time, date, and testing location nor a meter report per R 460.3601(601)(3). *Id.* On page 10 of the Complaint, Complainant also alleges that the meter tested by Consumers was not her meter.

5. Stipulation to Facts

On page 8 of the Complaint, Complainant alleges that Consumers refused to stipulate to facts contained in her September 29, 2015 request in which she asked if Consumers employee Mr. Morgan had the authority to stipulate to facts including her January 23, 2016 request to Consumers regarding information about any factual disputes. It is unclear from the Complaint what facts Complainant was requesting Consumers to stipulate to. Complaint pp 8-9.

6. Informal Hearing Officer

On page 9 of her Complaint, Complainant makes several allegations regarding the January 29, 2016 informal hearing with the Commission. Because a formal complaint contested case hearing is de novo and is not an appeal of the informal hearing process, there is no need to detail Complainant's positions regarding her informal complaint process allegations. With that in mind, the following information contained in the Complaint is provided for informational purposes only.

- The hearing officer was not a licensed attorney, was not impartial and was paid by Consumers;
- The informal hearing decision did not address Complainant's legal issues;
- The hearing officer allowed Consumers witness, Mr. Morgan, to testify about Complainant's broken meter;
- The hearing officer referred to Complainant as "Judge Judy"; and
- The hearing officer made an oral decision in favor of Consumers without providing the factual or legal basis of the decision.

Complaint pp. 8-10

7. Appeal Review

On pages 10 and 11 of the Complaint, Complainant make several allegations regarding her appeal of the MPSC staff decision. Because this formal complaint contested case hearing is de novo and is not an appeal of the informal hearing process, there is no need to detail Complainant's positions regarding her informal complaint process allegations. The following complaint allegation information is provided for informational purposes only. Complainant alleged that the regulation officer's decision did not provide the legal authority for the decision, the Regulation Officer engaged in ex parte communications with Consumers, and the Regulation Officer based relief upon inaccurate evidence regarding Complainant's meter because the meter tested by Consumers was not Complainant's meter. Complaint pp 10-11

8. Billing Issues

On pages 12 and 13 of the Complaint, Complainant details her allegations regarding her electric bills. Complainant alleges Consumers "back billed" her for 361kWh in May 2015. Complainant's May 2015 bill was estimated at 385 kWh resulting in a bill of \$59.91. A June actual meter read was 1083 kWh with a bill of \$174.69. Complainant contacted Consumers and inquired why her June 2015 bill was higher than her May 2015 bill. Consumers' Commission approved residential rates include an increased rate for electric use during the months of June through September. Consumers levelized the May and June bills which moved 361kWh from June to May. This reduced Complainant's June 2015 bill saving Complainant \$14.33.

Complainant also alleged that her July 2015 bill was too high. Complainant's July 2015 bill was based on an actual meter read of 1,786 kWh. After Complainant contacted

Consumers it reviewed the July 2015 bill and concluded that Complainant's meter dial had slipped and over read her usage by 1,000kWh. In August 2015 Consumers investigated Complainant's billing concerns.

On September 1, 2015 Consumers sent Complainant a letter (Exhibit CE-7) which informed Complainant that her July 2015 bill was incorrect. The letter also informed Complainant that the service address use potential was in the 700kWh range dating back to 2011 but Consumers believed that Complainant's meter misread 1,000 kWh of use which would be removed from her bill. In addition, in the same letter Complainant was informed that the service address meter would be replaced. This is the genesis of Complainant's back billing claim.

Consumers then agreed to reduce Complainant's May, June, and July 2015 use to 350kWh. This action reduced Complainant's total bill for May, June, and July 2015 by \$363.22. In November 2015 Consumers sent Complainant a letter which explained the billing adjustment.

On pages 13-14 of the Complaint, Complainant alleges that the Commission and Consumers privately agreed to settle Complainant's disputes with Consumers.

B. Consumers

1. Subject Matter Jurisdiction

In its Answer to the Complaint (Answer), Consumers does not agree with Complainant's conclusion that the Commission has no jurisdiction to conduct a formal hearing over a billing dispute. Consumers argues that the Commission has jurisdiction

per R 792.10439 to determine whether Consumers' rate and charges to Complainant were proper. Answer p 1.

2. Improper Legal Advice

Consumers does not agree with Complainant's conclusion that Consumers' employee Lynne McCollum provided Complainant with improper legal advice when Ms. McCollum told Complainant that she could forego an informal hearing and could file a complaint with the Commission. Consumers argues that R 792.10439 did not require Complainant to file a request for an informal hearing before filing a formal complaint with the Commission. Answer p. 2.

3 .Informal Hearing Process

In its answer to the Complaint, Consumers responded to Complainant's allegations regarding the Informal hearing process. Complainant alleged the informal hearing process was not conducted in a formal manner. Consumers argues that the Commission rules for informal hearings R 460.154(5) provide a utility customers rights and that the informal hearing provided Complainant with those rights. Answer p.2.

Consumers does not agree with Complainant's allegation that the Commission's rules did not provide her with the opportunity to conduct adequate discovery. Consumers argues that R 460.154(1)(b) allowed Complainant to examine, not less than 2 business days before the information hearing documents, records, files, account data, and similar material relevant to the issued raised at the hearing. Consumers argues that Complainant was provided with all of the information she requested three days before the informal hearing. *Id* p. 3

Consumers does not agree with Complainant's allegation that Consumers was required to inform Complainant of its legal position regarding Complainant's 2011 use of electricity. Consumers denies that the billings in dispute in this hearing were based on Complainant's 2011 usage. *Id*

4. Meter Testing

Consumer's agrees with Complainant that it did not test the Complainant's meter at Complainant's service address because it is not required to do so. Answer p. 3. Consumers argues that on September 17, 2015 Consumer's employee Brian Morgan sent Complainant an email and informed her that her meter would be tested at the Consumers Jackson MI facility and that Complainant could attend the testing. Exhibit CE-4.

Consumers argues that on November 13, 2015 it tested Complainant's meter and the testing revealed the meter had an average accuracy of 99.7%. Despite being informed that she could attend the testing, Complainant did not attend. Answer p. 4.

Consumers argues that after the November 13, 2015 meter testing it sent Complainant a Certification of Meter Test. Consumers does not agree with Complainant's allegation that she was not given a copy of the meter reports required by R 460.3601(3). Consumers argues that the Certification of Meter Test is the meter report it prepares to comply with Commission's rules *.Id.*

Consumers does not agree with Complainants' allegation that R 460.3615 requires Consumers to release records to Complainant. Consumers argues that R 460.3601(3) does not require Consumers to provide Complainant with records it is required to keep pursuant to R 460.3615.*Id*

Consumers denies Complainant's allegation that the meter tested on November 13, 2015 was not her meter. The meter number on Complainant's contested billings and on the Certification of Meter test is the same (58719663).*Id*

5. Stipulation to Facts

Consumers does not agree with Complainant's allegations that it has refused to stipulate to any facts. Consumers argues that it has no idea what facts Complainant would like Consumers to stipulate to. Consumers argues that it has communicated its position to Complainant, has credited Complainant's bill for disputed amounts, has tested Complainant's meter, and has determined that all voltage and connections to her home were appropriate and accurate. Answer p. 5.

6 .Informal Hearing Officer

Consumers agrees with Complainant that the informal hearing officer was not an attorney and agrees that he was not required to be an attorney per R 460.152(5). Consumers does not agree with Complainant that the hearing was not impartial. Consumers argues that it complied with R 460.152(5) when it selected the hearing officer. The person selected was not engaged in any other activities for or on the behalf of Consumers consistent with R 460.152(5) (c). Consumers does not deny that:

- The hearing officer allowed Consumers employee Brian Morgan to testify regarding Complainant's meter,
- The hearing officer limited Complainant's questioning; and

- The hearing officer provided an oral hearing decision at the conclusion of the hearing as permitted by R 460.154(7).

Answer pp. 5-6.

7 .Appeal Review

Consumers admits that it sent the hearing record from the informal appeal to the Michigan Agency for Energy as required by R 460.160. Consumers does not agree with Complainant's allegation that the meter tested and referenced on the Certification of Meter Test was not Complainant's meter. Answer pp. 6-7.

8. Billing Issues

Consumers does not agree with Complainant's allegation that Consumers "back billed" Complainant for 361kWh in May 2015. Consumers argues that Complainant's May 2015 bill was an estimate read of 385kWh which resulted in a bill of \$59.91. Answer p. 7. In June 2015 an actual meter read showed 1,083kWh of use which resulted in a bill of \$174.69. After Complainant contacted Consumers regarding her June 2015 bill, Consumers levelized Complainant's May and June 2015 bills which moved 361Kwh from the June bill to the May 2015 bill. Consumers argues that its actions reduced Complainant's total bills for May and June 2015. *Id.*

After Complainant contacted Consumers about her July bill, Consumers reduced Complainant's May, June, and July 2015 bills to 350 kWh per month. Consumers argues that this action reduced Complainant's May, June, and July 2015 billing total by \$363.22. Answer pp 9-10. In November 2015 Consumers sent Complainant a letter in which Consumers explained the recalculation of the May, June, and July 2015 bills. Consumers

does not agree with Complainant's allegation that the November 30, 2015 letter incorrectly states that Complainant owed Consumers \$35.00. *Id*

Consumer's denies that Complainant's 2015 usage was based on her 2011 usage. Consumers argues it sent Complainant a September 1, 2015 letter in which Mr. Morgan informed Complainant that the service address had the potential to use "in the range of 700kWh dating back to the summer of 2011". Exhibit CE-7. Consumers argues that there is nothing in the letter which indicated Complainant's 2015 usage was based on 2011 usage. Answer p. 1.

IV.

DISCUSSION

A. Subject Matter Jurisdiction

Complainant alleged on page two of the Complaint that the Commission has no jurisdiction to conduct a formal hearing on billing disputes. Complaint pp 2-3. In its Answer to the Complaint (Answer), Consumers does not agree with Complainant's conclusion that the Commission has no jurisdiction to conduct a formal hearing over a billing dispute. Consumers argues that the Commission has jurisdiction per R 792.10439 to determine whether Consumers rates and charges to Complainant were proper. Answer p 1. Rule 792.10439 provides in pertinent part:

A complaint shall be limited to matters involving alleged unjust, inaccurate, or Improper rates or charges or unlawful or unreasonable acts, practices, or omissions of a utility or motor carrier, including a violation of any commission rule, regulation, or order, including a tariff filed or published by a utility or motor carrier, or a violation of a statute administered or enforced by the commission. A complaint may be either formal or informal and may be made by a person having an interest in the subject matter of the complaint or may be made by the commission on its own motion or by the staff, subject to applicable statutory standards.

R 792.10439

Rule 439 clearly provides that the subject matter of a formal complaint filed with the Commission includes... alleged unjust, inaccurate, or improper rates or charges or unlawful or unreasonable acts, practices, or omissions of a utility or motor carrier, including a violation of any commission rule, regulation, or order, including a tariff filed or published by a utility or motor carrier, or a violation of a statute administered or enforced by the commission. Complainant's Complaint in this matter includes numerous allegations regarding inaccurate or proper rates and charges for her Consumers electric bills. Therefore, I find that the Commission does have subject matter jurisdiction to hear Complainant's formal complaint.

B. Improper Legal Advice

On page two of the Complaint, Complainant alleges that Ms. McCollum, a Consumers employee, provided Complainant with inaccurate legal advice when Ms. McCollum allegedly told Complainant she could bypass the Commission's informal hearing process and file a formal complaint with the Commission. Complaint p.2.

Consumers does not agree with Complainant's conclusion that Consumers' employee Lynne McCollum provided Complainant with improper legal advice. Ms. McCollum provided no sworn testimony in this matter. Neither Consumers nor Complainant called Ms. McCollum to testify. Consumers indicated in its Answer that if Ms. McCollum told Complainant that she could forego an informal hearing and could file a complaint with the Commission that information was correct and consistent with the Commission's rules. Consumers argues that R 792.10439 does not require Complainant to file a request for an informal hearing before filing a formal complaint with the Commission. Answer p. 2. I agree. Even if it is true that Ms. McCollum told Complainant

that she could file a formal complaint with the Commission, that information is consistent with R 792.10439.

Complainant also alleged in the Complaint that Ms. McCollum failed to provide Complainant with legal advice regarding the scope of the appeal and burden of proof. Even if this is true, there is no requirement in any applicable statute or rule which would require Consumers to provide that information to Complainant. Therefore, I find that Complainant has not established that Consumers violated a statute or Commission rule regarding this issue.

C .Informal Hearing Process

Complainant made several allegations regarding the informal hearing process. Specifically, Complainant's allegations involve the following: substantive notice requirement, legal dispute, and the discovery process. In its Answer, Consumers responded to Complainant's allegations regarding the informal hearing process. Complainant alleged the informal hearing process was not conducted in a formal manner. Consumers argues that the Commission rules for informal hearings R 460.154(5) provide a utility customers' rights. Consumers argues the R 460.154(5) informal hearing rights were provided to the Complainant Answer p.2.

Consumers does not agree with Complainant's allegation that the Commission's informal hearing rules denied her the opportunity to conduct adequate discovery. Consumers argues that R 460.154(1)(b) allowed Complainant to examine, not less than 2 business days before the information hearing, documents, records, files, account data and similar material relevant to the issues raised at the hearing. Consumers argues that

Complainant was provided with all the information she requested three days before the informal hearing. *Id* p. 3

There is no statute or rule which provides that an informal complaint decision may be appealed, in whole or in part, in a subsequent formal complaint contested case hearing. Because this formal complaint process contested case hearing is de novo and is not an appeal of the informal hearing process, there is no need to further address nor make findings regarding Complainant's specific allegations contained in her informal complaint.

D. Meter Testing

On page 6 of the Complaint, Complainant details her allegations regarding the testing of her electric meter. Complainant alleges that on August 4, 2015 she filed a complaint with the Michigan Attorney General, Consumer Protection Division, regarding Consumers' alleged refusal to test Complainant's electric meter. Complainant alleged that Consumers did not test her meter on site (at the service address) but removed the meter on September 21, 2015 for testing at another location. Complaint p 6.

Consumer's agrees with Complainant that it did not test Complainant's meter at Complainant's service address because it is not required to do so. Answer p. 3. Consumers' employee Brian Morgan testified that on September 17, 2015 that he sent Complainant an email and informed her that her meter would be tested at Consumers' Jackson MI facility and that Complainant could attend the testing. TR 29 Exhibit CE-3. Mr. Morgan testified that the meter was replaced at Complainant's service address because Consumers believed that the dial had slipped and had overstated Complainant's actual use. TR 28-29.

Complainant alleged that after the meter was removed for testing Consumers staff never contacted her with a meter report which contained the results. Complainant indicated on page 7 of her Complaint that she was never contacted and provided with the time, date, and testing location nor a meter report required per R 460.3601(601)(3).

Mr. Morgan testified that on November 13, 2015 Consumers tested Complainant's meter at its Jackson MI facility and the testing revealed the meter had an average accuracy of 99.7%. Despite being informed that she could attend the testing, Complainant did not attend. TR 30-31. Mr. Morgan testified that Consumers also checked the services address meter connections with the transformer and meter socket and found no irregularities TR 31.

Mr. Morgan testified that after the November 13, 2015 meter testing Consumers sent Complainant a Certification of Meter Test. See exhibit CE-4 TR 31. Consumers does not agree with Complainant's allegation that she was not given a copy of the meter report required by R 460.3601(3). Consumers argues that the Certification of Meter Test is the meter report it prepares to comply with Commission's rules. I agree. The Certification of Meter Test is the meter report Consumers was required to provide, and did provide to Complainant.

Complainant also alleged that the meter tested by Consumers was not the meter taken from Complainant's service address. Consumers denies Complainant's allegation that the meter tested on November 13, 2015 was not her meter. The evidence shows that the meter number on Complainant's contested billings and on the Certification of Meter test is the same number (58719663). See Exhibits CE 1, 2, 3 and 4.

Complainant provided no evidence that the meter removed from her service address was not the meter tested. Therefore, I find that the meter removed from Complainant's service address was the meter tested at Consumers Jackson facility which the Certification of Meter Test results show had an average accuracy of 99.7%.

E. Stipulation to Facts

Complainant alleges that Consumers refused to stipulate to facts contained in her September 29, 2015 request in which she asked if Consumers employee Mr. Morgan had the authority to stipulate to facts, and refused to stipulate to her January 23, 2016 request to Consumers regarding information about any factual disputes. The Complainant did not indicate in her Complaint nor in her testimony what facts was Complainant requesting Consumers to stipulate to. Despite this omission, Consumers does not agree with Complainant's conclusion that it refused to stipulate to any facts. Consumers argues that it communicated its position to Complainant, has credited Complainant's bill for disputed amounts, tested Complainant's meter, and has accurately assessed all appropriate voltage and connections to the service address. Answer p. 5 .TR 29-36.

R 792.10431(2) provides in pertinent part:

The parties to a proceeding may agree upon some or all of the facts. The agreement shall be evidenced by a written stipulation filed with the commission or entered upon the record. The stipulation shall be regarded and used as evidence in the proceeding. (Emphasis added)

R792.10431 (2)

Rule 431 clearly provides that a party to a proceeding "may agree" to some or all the facts. In the present matter there is no evidence that Consumers and Complainant entered into a written stipulation regarding some or all facts in issue. Complainant is

arguing the she has the right to compel Consumers to agree with her interpretation of some or all the facts in issue. There is no language in Rule 431 which suggests that Consumers must, rather than may, agree with Complainant on some or all of the facts. Therefore, I find that Consumers was not required to stipulate to whatever facts Complainant was seeking agreement upon.

F .Informal Hearing Officer and Appeal review

On page 9 of her Complaint, Complainant made several allegations regarding the January 29, 2016 informal hearing with the Commission. Because the formal complaint contested case hearing in this matter is de novo, and not an appeal of the informal hearing process, there is no need to detail, nor make findings, regarding Complainant's informal complaint process allegations.

On pages 10 and 11 of her Complaint, Complainant made several allegations regarding her appeal of the MPSC staff decision. Because this formal complaint contested case hearing is de novo and is not an appeal of the informal hearing process, there is no need to detail, nor make findings, regarding the Complainant's informal complaint process allegations.

Complainant is not permitted by statute or rule to use this formal complaint contested case hearing process as a means to obtain an appellate review of the informal complaint hearing and MPSC Staff hearing decisions nor to obtain an appellate review of the conduct of the informal complaint or MPSC hearing officer.

G. Billing Issues

On pages 12 and 13 of her Complaint, Complainant details her allegations regarding her electric bills. Consumers does not agree with Complainant's allegation that Consumers "back billed" Complainant for 361kWh in May 2015. Mr. Morgan testified that Complainant's May 2015 bill was an estimated read of 385kWh which resulted in a bill of \$59.91. TR 23. In June 2015 an actual meter read showed 1,083kWh of use which resulted in a bill of \$174.69. TR 24-25. After Complainant contacted Consumers regarding her June 2015 bill Consumers levelized Complainant's May and June 2015 bills which moved 361Kwh from the June bill to the May 2015 bill. Mr. Morgan testified that Consumers actions reduced Complainant's total bills for May and June 2015. *Id.*

Mr. Morgan testified that Complainant contacted Consumers about her July bill. Consumers reduced Complainant's May, June and July 2015 bills to 350 kWh per month. TR 32, See exhibit CE-6. Mr. Morgan testified that this action reduced Complainant's May, June, and July 2015 billing total by \$363.22. *Id.* In November 2015 Consumers sent Complainant a letter in which Consumers explained the recalculation of the May, June, and July 2015 bills. See Exhibit CE-7.

I find that the evidence shows the following.

- In May 2015 Complainant used an estimated 385kWh of electricity and was billed \$59.91. See Exhibit CE- 1, TR 21-25
- In June 2015, Complainant used 1,083 kWh and was billed \$174.69. The June meter read was an actual read.
- Consumers levelized Complainant's May and June usage to 746 kWh and 722kWh for a two month total of 1,468 kWh .*Id*

- Consumers' levelization reduced Complainant's two month billing by \$14.33.
- In July 2015 Consumers determined, through an actual meter read, that Complainant used 1,786kWh. Complainant contacted Consumers regarding the high July 2015 meter read and Consumer's determined that Complainant's meter dial had slipped. Consumers then reduced Complainant's July 2015 usage to 786 kWh. See Exhibit CE- 2, TR 28-29
- Consumers reduced Complainant's May, June, and July 2015 bills to 350 kWh per month, which reduced Complainant's total May, June, and July 2015 bills by \$363.22. TR 32, See Exhibit CE-6

I find Consumers billed Complainant for her May, June, and July 2015 electric usage and then made additional adjustments and reductions which resulted in a total savings to Complainant of \$363.22.

Consumer's denies Complainant's allegation that her 2015 usage was based on her 2011 usage. Mr. Morgan testified that on September 1, 2015 Consumers sent Complainant a letter in which Mr. Morgan informed Complainant that her service address had the potential to use... "In the range of 700kWh dating back to the summer of 2011". TR 34 See Exhibit CE-7. Mr. Morgan testified that there is no language in the letter which indicates Complainant's 2015 usage was based on 2011 usage. *Id.* Complainant presented no evidence which shows that her May, June, or July 2015 electric bills were based on her 2011 usage. Therefore, I find the preponderance of the evidence shows that Complainant's 2015 usage was not based on her 2011 usage.

H. Complainant Has not met her Burden of Proof

Complainant has the burden of proof regarding the allegations contained in her Complaint. Rule 792.10446 provides in pertinent part:

The complainant generally has the burden of proof as to matters constituting the basis for the complaint and the respondent has the burden of proof as to matters constituting affirmative defenses. The burden of proof, however, may be differently placed, or may shift, as provided by law or as may be appropriate under the circumstances.

Complainant has not presented sufficient evidence to show that Consumers improperly billed Complainant for her May, June, or July 2015 electrical usage. The evidence shows that Consumers, in response to Complainant's concerns, adjusted Complainant's bills resulting in reduced charges to Complainant. There is no evidence that Consumers violated any Commission rule when it initially billed and then subsequently adjusted, Complainant's billings.

I. Damages

In the Complaint, Complainant requests damages for ink, paper, certified receipt costs and other costs associated with her Complaint. See Complaint p. 15. Because Complainant has not met her burden of proof for her Complaint allegations there is no need to address the issue of Complainant's alleged damages.

V.

CONCLUSION

I recommend the Commission adopt my finding that the Complainant has not met her burden of proof to establish the Complaint allegations. I recommend the

Commission adopt my finding that Consumers properly billed Complainant for her May, June, and July 2015 electric usage in manner consistent, and in compliance, with all applicable Commission rules.

MICHIGAN ADMINISTRATIVE HEARING
SYSTEM
For the Michigan Public Service Commission

Martin D. Snider
Administrative Law Judge

November 15, 2016
Lansing, Michigan